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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/28/2001

Dirk Kranendonk

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OWENS CORNING
2790 COLUMBUS ROAD
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EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/966,309	Applicant(s) KRANENDONK, DIRK	
	Examiner Norca L. Torres-Velazquez	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 22-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 22-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicants have amended independent claim 1 to further recite the limitation “*said continuous coating being free of random discontinuities that increase porosity and which are susceptible to creating visible irregularities the surface is roller painted*”.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is noted herein that the language indicating that the porosity of the wall covering is reduced significantly is indefinite because the claim is fails to establish to what is the reduced porosity compared to... is Applicant trying to refer to a reduction of the porosity of the non-woven fiber tissue or mat instead? The claim as written indicates that the thermoplastic polymer coating reduces significantly the porosity of the wall covering, it is not clear if Applicants are trying to indicate that by providing a thermoplastic polymer coating to a

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nonwoven fiber tissue or mat, the final product (the wall covering) would have a reduced porosity in comparison to a wall covering that do not have the claimed coating? It is noted that without any parameter that would allow one of ordinary skill in the art to determine what is the porosity of the claimed material, the claimed “reduced porosity” is indefinite.

4. Claims 8 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because the Applicant has not provided copy of procedure used to measure the

water vapor transmission rate by the DIN Standard 52615.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims **1, 23, 36, 40**, 3-4, 11-12, 22, 25-26 and 33-34 are rejected under 35 U.S.C. 102(b) as being anticipated by JACKSON (US 5,876,551) as stated in previous office action.

Claim Rejections - 35 USC § 102/103

6. Claims 2, 8, 24, 30 and 37 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JACKSON (US 5,876,551) for the reasons stated in the previous office action.

Claim Rejections - 35 USC § 103

7. Claims 5-7, 9-10, 13, 27-29, 31-32, 35 and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over JACKSON (US 5,876,551) as applied above, and further in view of NUCCI et al. (US 6,265,067 B1) for the reasons stated in previous office action.

Response to Arguments

8. Applicant's arguments filed January 21, 2008 with regards to the prior art of JACKSON have been fully considered but they are not persuasive.

- Applicants argue that Jackson does not disclose, teach or otherwise suggest a coating that covers the non-woven mat in a continuous fashion and free of random discontinuities, as shown in Applicant's Figure 2. Applicants indicate that the Jackson reference discloses a material having a surface with intentionally formed "randomly distributed discontinuities" and argue that these discontinuities are disadvantageous from the standpoint that they would more readily receive any paint roller-applied to the surface and magnify its imperfect, or "irregular" nature. As stated in the previous office action, Figure 2 depicts the layers of the wall covering material, but still is not sufficient to define what is meant by "random discontinuities". The disclosure is silent as to what these discontinuities are (i.e. microscopic or macroscopic discontinuities). With regards to claim 1, the Examiner gives the broadest reasonable interpretation to the claim since the Specification does not preclude the type of microscopic pores taught by JACKSON.

As stated before by the Examiner, the Jackson reference provides a breathable or moisture permeable wall covering having a porous polymeric ply, which is fused to and supported by a nonwoven substrate ply. The porous polymeric ply as a smooth, continuous aesthetically pleasing appearance, while simultaneously achieving a moisture vapor permeability which prevents moisture from being trapped on or within a wall to which the wall covering is applied. More specifically, the porous polymeric ply has a substantially macroscopic-continuity wherein a plurality or multiplicity of miniature or

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microscopic discontinuities or holes are randomly distributed. (Col. 2, lines 19-32) The Examiner equates such description as providing a continuous layer. It is noted that the present invention does not preclude having micropores, which are necessary in order to provide a material with gas permeability. Nor the specification indicates that the polymeric coating is a monolithic film.

While Figure 2 of the present application does not show “holes” or “pores”, it is noted that the presence of certain porosity is recognized and desirable by the disclosure of the present application. (Refer to [0033]) The rejections over JACKSON are maintained herein since the microscopic discontinuities of the polymeric material of the reference do not affect the continuity or smoothness of its outer or exposed surface when looked by the unaided eye. (Jackson, Col. 2, lines 32-34) Therefore, “visible irregularities” would not be created when roller painted since the discontinuities in the polymeric material are microscopic and are not visible by the unaided eye.

- With regards to arguments regarding the rejection of claims 5-7, 9-10, 13, 27-29, 31-32, 35 and 38-39 over JACKSON '551 in view of NUCCI '067, it is noted that the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

It is noted that both references are directed to wall paper materials, it is noted that the composition of NUCCI possess desirable properties such as oxygen transmission rate, water vapor transmission rate and coefficient of friction, that are compatible with the purpose of the plastisol layer of the primary reference of JACKSON. It is the Examiner's position that the combination of these references meets the TSM Test and the plastisol layer of JACKSON and the composition of NUCCI et al. could be considered equivalents as they provide the sheet with similar desirable properties for the wall paper material applications.

9. Arguments with regards to the rejections under 35 U.S.C. 112, first paragraph and second paragraph have been considered, however, the Examiner maintains her position as stated in the Final Office Action mailed 08/30/2006.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-

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1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Norca L. Torres-Velazquez/
Primary Examiner, Art Unit 1794